

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 24, 2008 Session

**MURAD M. ABDELNOUR, by next friend and wife, SANA DABIT-
ABDELNOUR, and SANA DABIT-ABDELNOUR, v. THOMAS F. BAKER,
IV, trustee and FIRST TENNESSEE NATIONAL BANK ASSOCIATION**

**Direct Appeal from the Chancery Court for Hamilton County
No. 03-0620 Hon. Howell N. Peoples, Chancellor**

No. E2007-01889-COA-R3-CV - FILED JUNE 30, 2008

Plaintiffs in this action asked the Court to declare a deed of trust void because the wife had been misled into signing the document. Upon trial, the Trial Court held the trust deed was valid and enforceable, but denied defendants' request for attorney's fees. Both parties appealed. We affirm the Trial Court's Judgment.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, J., joined.

William H. Horton, Chattanooga, Tennessee, for appellants.

James R. McKoon and John R. Hegeman, Chattanooga, Tennessee, for appellees.

OPINION

This action originated when the plaintiffs, a husband and wife, brought this action asserting that plaintiffs owned property and had signed a deed of trust on this property during a period when the husband was incompetent and had misled his wife into signing the deed of trust.

They further asserted that the husband misled his wife into signing a piece of paper that she later learned was a deed of trust, and that defendant bank official had notarized the wife's signature, falsely stating that she had appeared before the notary. Plaintiffs asked that the deed of trust be declared invalid and a copy of the deed was attached to the Complaint.

After numerous motions were made and ruled upon, the case came on for trial on April 17-19, 2007. Mrs. Abdelnour testified that her husband was very abusive, both emotionally and physically, and that he had always made scenes, and would throw things, and assault her. She testified that at some point her husband began spending money recklessly, and she testified that on the date in question her husband came to her store and she was very busy with many customers, but he gave her a paper and said "just sign this", and she inquired what was it, and he said "it's nothing, don't worry about it." She testified that he kept rushing her, and she wanted him to leave it and let her read it, but he wouldn't.

She testified that she thought maybe it was just a signature card or something for the bank, and she never dreamed that it would be something that could make them lose their house. She said that she was terrified of how her husband would react if she didn't go ahead and sign the papers, which she did.

She testified that she had never signed the loan application, but admitted she signed the subject deed of trust, but stated that no notary was present and that Mr. William S. McCord, III knew she worked right across the street from the bank.

McCord testified that he was a loan officer with First Tennessee, and that he knew the husband as a customer of the bank. He testified the husband told him he wanted to invest in condos and that it was not unusual for him to just deal with the husband as the "breadwinner" for the family. He testified that an appraisal was required to get the loan approved and that he called the husband to arrange a time for closing and informed the husband the wife would have to be there as well, but the husband showed up alone. He testified that the husband signed all the documents and then asked if he could take the ones that needed the wife's signature across the street for her to sign. He conceded this was not something he generally did, but made an exception for the husband because he was such a good customer. He said the husband returned with the signed documents and then left. McCord stated that he then pulled the signature card and compared the wife's signature to that on the documents. He admitted that the normal practice was to have someone sign a deed of trust before a notary public and admitted that when the husband brought the papers back the witness had no way of knowing whether the wife signed freely.

Jonathon Ransom testified that he worked for First Tennessee Bank, was a management trainee working with McCord, and that he was also a notary at the time. He testified that he knew both the husband and wife, although the wife not as well, and that he was present at the closing, but that he could not remember how the deed of trust was signed, but he would typically notarize the documents when he was attending a closing, and that was the last thing he would do before packaging the documents. He testified that he notarized the deed of trust in question, and

stated that he saw the husband sign it but could not remember seeing the wife sign it, and that no one directed him to notarize the deed, which he did.

Following trial, the Court entered an Order of Judgment, dismissing the wife's claims against defendants, and found the deed of trust to be valid and enforceable, thereby granting defendants' judgment on their counterclaim. The Court, in its Memorandum, said that it could not refuse to enforce the deed simply because the wife had failed to read it before signing, and detailed several facts that cast doubt on her credibility.

The Court found that while the circumstances surrounding the wife's signing of the deed of trust might have been unpleasant or stressful, she did not establish that she had been forced or coerced into signing the document against her will. The Court found that McCord had denied telling Mr. Abdelnour that his wife didn't have to know about the loan, or asking him to get her to sign without her knowing what she was signing. The Court found McCord's testimony to be credible, and the Court granted judgment to the bank, including reasonable attorney's fees pursuant to the deed of trust.

The wife filed a Motion to Alter or Amend, arguing that attorney's fees should not be recovered. The Court entered an Order on the Motion to Alter or Amend, and granted the same, finding the language of the deed of trust did not provide for personal liability of Mrs. Abdelnour for attorney's fees. This appeal ensued.

The issues on appeal are:

1. Whether the Trial Court erred in finding that the deed of trust was enforceable against Mrs. Abdelnour when she was fraudulently induced to sign the deed of trust and the bank's agent contributed to the fraud?
2. Whether the Trial Court erred in reversing its award of attorney's fees to defendants where the deed of trust provides for same, and where the issue was not raised prior to post-trial motion?

The wife argues the deed of trust should not have been held enforceable, since she was fraudulently induced to sign it, and the bank's agent contributed to the fraud. The wife argues that bank employees aided the husband by telling him to get her signature by any means, and by notarizing the document outside her presence. The wife argues that she is a victim of fraudulent inducement as recognized in *Lamb v. MegaFlight, Inc.*, 26 S.W.3d 627 (Tenn. Ct. App. 2000).

The Trial Court reasoned that Mrs. Abdelnour acknowledged that her husband was untruthful, abusive, and a bad businessman, and that she would not have signed a deed of trust on her home if he had held a gun to her head, yet she testified she signed the document without reading it because she was afraid he would create a scene in her store. The Trial Court also said that she intimidated her husband and that she considered herself a strong woman, and the Court also noted

that this was not the first time she had tried to avoid a document she signed by stating she failed to read it.

The Trial Court concluded that she had not been forced or coerced into signing the document against her will, and that by signing it without reading it, she was presumed to know the contents of a document she signed.

Based on the factual findings, it is clear the Trial Court properly held that there had been no fraud. As the Trial Court found, this case falls within the rule that one is presumed to know the contents of a document she signs. *See Giles v. Allstate Ins. Co.*, 871 S.W.2d 154 (Tenn. Ct. App. 1993). The evidence does not preponderate against the Trial Court's findings. Tenn. R. App. P. 13(d).

The wife also argues that the bank employees contributed to the husband's commission of a fraud upon her, but the Trial Court found McCord's testimony to be credible, and the trial court is the best judge of witness credibility, and deference must be shown to the trial court's credibility determinations. *Keaton v. Hancock County Bd. of Educ.*, 119 S.W.3d 218 (Tenn. Ct. App. 2003). This issue is without merit.

Finally, she argues that the deed should not be enforced because her signature was not properly notarized, since she did not sign the deed in front of the notary. The Supreme Court has made clear, however, that "all instruments required by law to be acknowledged and registered are good as between the parties and their privies without acknowledgment or registration." *Fidelity Mut. Life Ins. Co. v. Wall*, 68 S.W.2d 108 (Tenn. 1934). This issue is without merit.

First Tennessee argues the Trial Court erred in reversing its judgment awarding attorney's fees to First Tennessee, and that the wife should have been precluded from raising this argument for the first time in a post-trial motion.

The pertinent part of her Motion is as follows:

In Paragraph 2(b) of its Order, the Court held that First Tennessee Bank may submit an affidavit to recover attorney's fees against Sana Dabit-Abdelnour under the terms of the Deed of Trust. However, Ms. Abdelnour is not individually liable for attorney's fees.

Exhibit 5 at trial (attached hereto) was the Deed of Trust signed by Sana Dabit-Abdelnour. The proof in record was that she was not a borrower and did not execute the note and Agreement secured by the Deed of Trust. That note and loan agreement was signed only by her husband, Murad Abdelnour.

The Bank apparently is relying on Paragraph 9 of the Deed of Trust, which states in pertinent part as follows:

If Trustee or Beneficiary shall be made a party to any action or proceeding affecting the Property . . . or the interest of Beneficiary under this deed of trust . . . or if the Beneficiary employs an attorney . . . to foreclose the deed of trust by judicial proceedings . . . , Trustee shall be reimbursed by grantor, immediately and without demand, for all reasonable costs, charges, and attorney's fees incurred by them or either of them in such case and the same shall be secured hereby as a further charge and lien upon the Property.

There is no individual liability for the fees, this is made clear by Paragraph 21 of the Deed of Trust which states as follows:

Any grantor who co-signs this deed of trust but does not execute the Agreement (a) is co-signing this deed of trust only to convey that Grantor's interest in the Property to Trustee under the terms of this deed of trust, (b) is not personally liable under the Agreement or this deed of trust and (c) agrees that Beneficiary and any other Grantors herein may agree to extend, modify, forebear or make any other accommodations with regard to the terms of this deed of trust or the Agreement without that Grantor's consent or without releasing that Grantor or impairing the lien of this deed of trust as to that Grantor's interest in the Property.

Since the Court found that the deed of trust is a binding contractual obligation on Ms. Abdelnour, the language in the deed of trust that she is not liable for attorney's fees is binding on the Bank. Accordingly, Ms. Abdelnour requests that her motion be granted.

The Trial Court granted the Rule 59 Motion and said:

2. The judgment for attorney's fees was based on the deed of trust, which was executed by Ms. Abdelnour. Ms. Abdelnour was not liable on the underlying note. Paragraph 9 of the deed of trust provides:

If Trustee or Beneficiary shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Trustee or if Beneficiary under this Deed of Trust, or Beneficiary employs an attorney to collect any or all of the indebtedness secured hereby or to foreclose this Deed of Trust by judicial proceedings, or authorized Trustee to conduct Trustee's sale proceedings hereunder, Trustee or Beneficiary shall be reimbursed by Grantor, immediately and without demand, for all reasonable costs, charges and attorney's fees incurred by them or either of them in any such case, and the same shall be secured hereby as a further charge and lien against upon Property.

“Grantor” is defined under the deed of trust to be both Ms. Abdelnour and Marc M. Kobelman. Paragraph 21 of the deed of trust provides as follows:

Any Grantor who co-signs this deed of trust but does not execute the Agreement (a) is co-signing this deed of trust only to convey that Grantor’s interest in the Property to Trustee under the terms of this deed of trust, (b) is not personally liable under the Agreement or this deed of trust and (c) agrees that Beneficiary and any other Grantors herein may agree to extend, modify, forebear or make any other accommodations with regard to the terms of this deed of trust or the Agreement without that Grantor’s consent or without releasing that Grantor or impairing the lien of this deed of trust as to that Grantor’s interest in the Property.

The deed of trust defined in the “Agreement” as the equity line of credit note, which Ms. Abdelnour did not sign.

3. The language in this paragraph is clear that there is no personal liability to any grantor unless that grantor executed the underlying note and loan agreement. This would include any liability for attorney’s fees and expenses incurred relating to the deed of trust.

4. Since Defendants were seeking attorney’s fees and expenses under the deed of trust, and the deed of trust failed to provide for the personal liability of Ms. Abdelnour, no judgment for attorney’s fees and expenses can be granted against Ms. Abdelnour individually under the deed of trust.

Defendants argue that Ms. Abdelnour is “precluded from raising for the first time a new issue or defense in a Motion to Alter or Amend that she did not raise at the trial level”. This Court in *Bradley v. McLeod*, 984 S.W.2d 929 (Tenn. Ct. App.1998), observed at page 933 “Tenn.R.Civ.P. 59.04 motions may be granted (1) when the controlling law changes before a judgment becomes final, (2) when previously unavailable evidence becomes available, or (3) when, for sui generis reasons, a judgment should be amended to correct a clear error of law or to prevent injustice.” Essentially, the Rule 59 Motion raises charges that the Trial Court’s ruling constituted an error of law in that under the facts the trust deed as a matter of law did not obligate her to pay attorney’s fees to the Bank’s attorneys. Interpretation of unambiguous agreements is a question of law for the courts. *Hardeman County Bank v. Stallings*, 817 S.W.2d 695 (Tenn. Ct. App. 1995).

We conclude the Trial Court’s analysis of the documents is correct and we affirm the ruling of the Trial Court on this issue.

For the foregoing reasons, we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed one-half to plaintiffs and one-half to the First Tennessee National Bank Association.

HERSCHEL PICKENS FRANKS, P.J.